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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DANICA P., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JESSICA K.,

Defendant and Appellant.

D057400

(Super. Ct. No. EJ3065)

APPEAL from an order of the Superior Court of San Diego County, Michael J. Martindill, Juvenile Court Referee. Affirmed.

Jessica K., mother of dependent child Danica P., appeals a juvenile court order denying her petition for modification under Welfare and Institutions Code¹ section 388 by which she sought to terminate the de facto parent status of Danica's paternal great-aunt, C.B. Jessica contends the court erred by denying the petition without an evidentiary

¹ Statutory references are to the Welfare and Institutions Code.

hearing. She further contends she met her burden under section 388 by showing circumstances had changed and C.B.'s relationship with Danica no longer required or warranted C.B.'s de facto parent status. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2009, three-month-old Danica became a dependent of the juvenile court under section 300, subdivision (b) and was removed from parental custody based on findings her parents, Jessica and Daniel M.,² were unable to provide regular care for her as a result of their substance abuse. The court placed Danica with C.B. and ordered the parents to participate in reunification services.

During the next six months, Jessica completed in-patient drug treatment and lived with the maternal grandmother. She was having unsupervised visits with Danica, who was doing well in her placement with C.B. At a hearing on November 19, 2009, the court granted C.B.'s request for de facto parent status.

On February 15, 2010, the court placed Danica with Jessica for a 60-day trial visit. During that time, Jessica failed to drug test on two occasions. Agency received information from C.B. and another source that Jessica was still in a relationship with Daniel and was allowing him to visit Danica in violation of Agency's guidelines.

At a hearing on April 27, 2010, county counsel and minor's counsel expressed their concerns about Jessica's lack of progress with her recovery, especially her missed drug tests. Agency recommended six more months of family maintenance services for

² Daniel is not a party to this appeal.

Jessica. Counsel for the parents then argued that because Danica was no longer in C.B.'s care, C.B.'s de facto parent status should be terminated. The court set a "trial" on the parents' request to terminate de facto parent status, but county counsel suggested the proper procedure was for the parents to file a section 388 petition for modification in order to show circumstances had changed and conditions supporting de facto parent status no longer existed. The court agreed, stating it would hear the section 388 petition on May 17, 2010, at the time of trial on Daniel's request for unsupervised visits with Danica.

Jessica filed a section 388 petition seeking to have C.B.'s de facto parent status terminated. As changed circumstances, the petition alleged Danica was no longer in C.B.'s care, C.B. was no longer Danica's psychological parent, and C.B. was no longer in a position to provide the court with relevant information. As to best interests, the petition alleged C.B. continued to obstruct and interfere with successful reunification and termination of jurisdiction. On Form JV-183, the court ordered a hearing on the petition on May 17 "because the best interest of the child may be promoted by the request."

At the May 17 hearing, Jessica's counsel argued C.B.'s de facto parent status should be terminated because Danica had been placed with Jessica and looked to her, rather than C.B., as a psychological parent. Further, because Jessica is Danica's day-to-day caregiver, C.B. no longer has reliable information that would be unique or useful to the juvenile court. Jessica's counsel asked the court to immediately terminate C.B.'s de facto parent status.

County counsel opposed the request, arguing Jessica had not shown changed circumstances or best interests as required by section 388. Specifically, county counsel argued there was no evidence that C.B. was obstructing or interfering with reunification. Thus, the court should not terminate C.B.'s de facto parent status.

Minor's counsel argued that although Danica had been returned to Jessica's care, there was no showing Danica's best interests required terminating C.B.'s de facto parent status. Specifically, there was no evidence C.B. had done anything to thwart reunification. Minor's counsel then offered into evidence three addendum reports prepared by the social worker: one dated May 17 and two dated April 27. Jessica's counsel said she had no objection to the admissibility of those reports, and the court admitted them into evidence.

The court tentatively ruled there were no changed circumstances to support terminating C.B.'s de facto parent status. It then told counsel for the parents: "If there is additional evidence, additional documentation or testimony . . . that you'd like to bring forward, I will continue to listen." Jessica's counsel asked only to respond to the comments of opposing counsel. After making further argument, she requested the court terminate C.B.'s de facto status. The court denied the request and allowed C.B. "to maintain her status as a de facto parent."

DISCUSSION

I

Jessica contends the court erred by summarily denying her section 388 petition for modification to terminate C.B.'s de facto parent status. Jessica asserts the court should

have held a full evidentiary hearing because she made a prima facie showing of changed circumstances to support her petition.

A

A party may petition the court under section 388 to change, modify or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that (1) there is a change of circumstances or new evidence, and (2) the proposed change is in the child's best interests. (§ 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) The petition must be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a); *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) "The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing." (*In re Marilyn H., supra*, at p. 310.) " '[I]f the petition presents any evidence that a hearing would promote the best interests of the child, the court will order the hearing.' " (*In re Jasmon O., supra*, at p. 415.) Whether a previous order should be modified and whether a change would be in the child's best interests are determinations within the sound discretion of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Casey D., supra*, p. 47.)

B

Conceding the court ordered a hearing on her section 388 modification petition, Jessica nevertheless asserts the court erred by "summarily" denying the petition "without any real substantive, evidentiary hearing." Jessica claims she did not have the

opportunity to do anything other than argue her position (through counsel), and she was not permitted to call or cross-examine witnesses or introduce evidence.

The record does not support Jessica's argument. The court ordered a hearing on the petition "because the best interest of the child may be promoted by the request." At the hearing, the court received Agency's reports in evidence and heard argument of counsel for all parties, as well as C.B.'s argument as de facto parent. When the court gave the parties the opportunity to present *additional evidence, documentation or testimony*, Jessica expressly declined to do so, asking only to respond to opposing counsel's arguments. (See Cal. Rules of Court, rule 5.570(h)(2) [at section 388 hearing, "proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court"].) To the extent Jessica believes the court denied her section 388 petition without the "formalities" of an evidentiary hearing, she has forfeited this claim by acquiescing to the manner in which the hearing was conducted. (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1080-1081; see also *In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Had Jessica wanted to introduce any evidence, call or cross-examine witnesses, or present any testimony, she could have done so. " ' "The law casts upon the party the duty of looking after his [or her] legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his [or her] objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal." [Citation.]' " (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.)

In any event, the court did not summarily deny Jessica's section 388 petition. As we previously noted, the court ordered a hearing after Jessica made a prima facie showing Danica's best interests "may be promoted" by the requested modification. (§ 388; *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 310.) The court conducted a hearing at which it received reports in evidence, considered arguments of all counsel and invited the parties to present additional evidence, documentation or testimony. All parties understood the purpose of the hearing was to determine whether C.B.'s de facto parent status should be terminated, not whether Jessica was entitled to another hearing.³ The court carefully considered the evidence before denying the petition on the merits. This type of evidentiary hearing fully comported with due process. (*In re C.J.W.*, *supra*, 157 Cal.App.4th at p. 1080.)

II

Jessica contends the court abused its discretion by denying her request to terminate C.B.'s de facto parent status because C.B.: (1) no longer filled the role of psychological parent to Danica; (2) had no unique information regarding Danica to assist the court in assessing Danica's best interests; and (3) had no potential custody interest to protect as Danica's paternal great-aunt.

A

³ There is some confusion in the record by the parties' and court's use of the term "prima facie." Nevertheless, we are satisfied the court denied Jessica's section 388 petition based on its consideration of all relevant evidence proffered by the parties.

Once the court grants de facto parent status to an adult, the status continues even if the parent regains custody of the child. (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 67.) "[D]e facto parent status does not terminate by operation of law or by any other automatic mechanism except where the dependency itself is terminated." (*Ibid.*; *In re D.R.* (2010) 185 Cal.App.4th 852, 859-860.) A party seeking to terminate de facto parent status has the burden of showing a change of circumstances such that the status is no longer warranted. (*In re D.R.*, *supra*, at p. 860; *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1513-1514.) Changed circumstances can be shown, for example, when there is no longer a psychological bond between the adult and the child, or when the de facto parent no longer has reliable or unique information about the child that could be useful to the juvenile court. (*In re D.R.*, *supra*, at p. 860.)

We review the court's order denying a request to terminate de facto parent status for abuse of discretion. (*In re D.R.*, *supra*, 185 Cal.App.4th at p. 863.) In this regard, the order will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the trial court. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319; *In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.)

B

Here, Jessica did not meet her burden of showing a change of circumstances that no longer supports C.B.'s de facto parent status. Because C.B. was Danica's caregiver

from the time Danica was three months old until she was 13 months old, their relationship was, in essence, a life-long one for Danica. Throughout those ten months, Danica was thriving in C.B.'s care, which undoubtedly meant they had developed a psychological bond. Although Danica was no longer in C.B.'s care at the time of the hearing on the section 388 petition,⁴ C.B. continued to play a role in Danica's life by assuring Danica's needs were met, supporting Jessica's reunification efforts and remaining a placement option should those efforts fail. Danica's placement in Jessica's care, without more, does not support a finding that the psychological bond between Danica and C.B. no longer exists.

Further, C.B. regularly attended juvenile court hearings, sought to maintain a role in Danica's life and was willing to advocate for her best interests until Jessica successfully completed reunification and the court could terminate its jurisdiction. Because C.B. had parented Danica for most of her young life, C.B. remained in a position to provide the juvenile court with reliable and unique information about Danica's well-being.

Jessica asserts the court should have terminated de facto parent status because there was tension between Jessica and C.B., and C.B. was undermining her authority as a parent and interfering with her ability to ensure termination of juvenile court jurisdiction. On this record, however, the court could reasonably find C.B. was not attempting to thwart reunification, but instead was assisting Jessica by ensuring Danica's needs were

⁴ At the time of the hearing, Danica was 16 months old and had been in Jessica's care for three months.

met and facilitating successful reunification. (Cf. *In re Brittany K.*, *supra*, 127 Cal.App.4th at p. 1515 [de facto parent caused substantial emotional distress to the children and undermined their stability and security in foster care placement].) We cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) Moreover, there was no showing that terminating C.B.'s de facto parent status would be in Danica's best interests. The court did not abuse its discretion by denying Jessica's modification petition seeking to terminate C.B.'s de facto parent status.⁵

DISPOSITION

The order is affirmed.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

AARON, J.

⁵ In light of our holding, we need not address Jessica's argument that without de facto parent status, C.B. would continue to be involved in Danica's life as her great-aunt.